

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE, Suite 9100
Washington, DC 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Petitioner,

v.

YOUNGIN'S TOWING AND AUTO BODY,
INC.

Respondent

Case Nos.: CR-C-07-100057
CR-I-07-S70768
Consolidated

FINAL ORDER

I. Introduction

Respondent Youngin's Towing and Auto Body, Inc. has appealed a Notice to Revoke its business licenses to operate a towing business and towing service storage lot located at 1940 Montana Ave., N.E. that was issued by Department of Consumer and Regulatory Affairs ("DCRA") on April 27, 2007. This administrative court has jurisdiction to hear Respondent's appeal by virtue of 16 DCMR 411.6.¹

¹ 16 DCMR 411.6 provides:

Any person or entity adversely affected by the denial, revocation, or suspension of a tow truck license, towing business or towing service storage lot license and endorsement, or who has been fined or otherwise disciplined in accordance with the provisions of this chapter, may file an appeal in writing with the Board of Appeals and Review of the District of Columbia or its successor.

The Office of Administrative Hearings has jurisdiction of cases previously within the jurisdiction of the Board of Appeals and Review. D.C. Official Code §2-1831.03(a)(3).

DCRA is seeking revocation of Respondent's licenses as a result of investigations of six separate public complaints received by DCRA over a five month period, from November 2006 through March 2007. DCRA contends that the investigations show that Respondent committed multiple violations of regulations governing the operation of towing businesses and that these violations provide grounds for revocation of Respondent's licenses.

On July 5, 2007, the parties filed a joint motion requesting that the license revocation case (CR-C-07-100057) be consolidated with a related case in which DCRA seeks civil fines for three violations alleged to have occurred in connection with one of the incidents investigated.² In the Notice of Infraction issued in that case (CR- I-07-S700768), DCRA seeks fines totaling \$3,000 for these violations, which were alleged to have occurred on March 21, 2007. The joint motion of the parties to consolidate the cases and continue the hearing scheduled for July 6, 2007 was granted. The hearing was rescheduled for August 15, 2007, and subsequently rescheduled to September 13, 2007, when Respondent's unopposed motion for a continuance was granted.³

At the hearing convened on September 13, 2007, DCRA was represented by Melinda M. Bolling, Esq. and Respondent was represented by Charles G. Canty, Esq. Witnesses for DCRA included three individuals who filed public complaints: William McClure, Maurice Moore, and Leroy Atkins. In addition, the following witnesses testified for DCRA: Tom Gross, GEICO Insurance; Leslie R. Trent, Chief, Towing Control Center; DCRA Investigator Clement Stokes,

² The fines are sought pursuant to the Civil Infractions Act. D.C. Official Code §§ 2-1801.2 *et seq.*

³

On July 26, 2007, a Temporary Restraining Order was issued in D.C. Superior Court (2007 CA 005058 B) with the consent of the parties providing that Respondent voluntarily cease towing vehicles identified by the Department of Public Works (DPW) until the resolution of this administrative case.

and DCRA Supervisory Investigator Kevin Carter. Respondent's owner and President, James W. Gee, testified on behalf of Respondent.

II. Applicable Law

A. Towing Regulation Overview

On December 21, 2004, the Council of the District of Columbia adopted comprehensive regulations governing the operation of towing businesses. 16 DCMR 400 *et seq.* These regulations govern both tows initiated at the request of the owner, called private tows in the regulations, and tows initiated without the consent of the owner, which are called public tows. If a vehicle is towed without the consent of the owner, it is considered a public tow, whether the vehicle is towed from private or public property.⁴

Such public tows are authorized only when requested by public officials, such as a police officer or parking enforcement official.⁵ Public tow requests are ordered and dispatched by the Towing Control Center operated by the Department of Public Works (DPW) to private towing companies which must be licensed. 16 DCMR 406.1. Before a towing company initiates a public tow, it must obtain a towing control number from DPW. Information that the company

⁴ The definitions of public and private tows appear at 16 DCMR 499. They are as follows:

Private Tow – the towing of a vehicle at the request of the owner or the authorized agent of the owner.

Public Tow – the towing of a vehicle, other than a vehicle owned or controlled by a government entity, at the direction or arrangement of a government entity or, without the consent of the owner or operator of the vehicle, including relocations, repossessions, and tows from private real property.

If a vehicle is being towed from private property without the consent of the owner, it may not be towed unless the vehicle has been issued a citation by a police office or parking enforcement official or at the direction of a police officer in an emergency. 16 DCMR 406.7.

must provide to obtain a towing control number includes a description of the vehicle, the reason for the tow, the name of the governmental official authorizing the tow, and the location of the storage lot where the vehicle can be reclaimed. 16 DCMR 406.4. Such storage lots must be inspected and licensed and located in the District of Columbia. 16 DCMR 401, 402. DPW is responsible for notifying the vehicle owner of record of the location of where the vehicle can be reclaimed. 16 DCMR 406.10.

The maximum rates that may be charged for public tows are set by regulation. 16 DCMR 408.1 Towing companies must accept checks and at least two major credit cards in payment and may not require cash only. 16 DCMR 408.8. Owners of vehicles must be provided with a copy of a printed "Owner's Bill of Rights for Towed Vehicles," issued by DCRA at the time the tow is initiated, if the vehicle owner is present, or at the time of release. 16 DCMR 405.7. The vehicle must be promptly released after payment and proof of identity. 16 DCMR 408.7. Before releasing the vehicle, the towing business must contact DPW's Towing Control Center by telephone and report the time of release, the condition of the vehicle, and to whom the vehicle is being released. 16 DCMR 405.3.

B. Burden of Proof

DCRA has charged Respondent with numerous violations of the towing regulations as grounds for license revocation. As the proponent of revocation, DCRA has the burden of proving each of these violations by a preponderance of the evidence. D.C. Official Code §2-509(b). DCRA also has the burden of proving each of the violations charged in the Notice of Infraction. by a preponderance of the evidence. D.C. Official Code 2-1802.03(a).

I will first make findings of fact and conclusions of law with respect to each of the violations alleged by DCRA in the Notice to Revoke and then determine whether the violations alleged provide grounds for license revocation under the applicable law. The complaints investigated involved incidents alleged to have occurred on November 5, 2006, January 10, 24, and 29, 2007, February 12, 2007, and March 21, 2007. The violations alleged to have occurred on each of these dates in the Notice to Revoke will be discussed separately. I will then address the violations alleged to have occurred on March 21, 2007 in the Notice of Infraction.

Based on the entire record in this matter, including my assessment of the credibility of the witnesses, I hereby make the following findings of fact and conclusions of law:

III. Incident on November 5, 2006 – Mr. William S. McClure

A. Findings of Fact

On Sunday November 5, 2006, at approximately 2 pm, William S. McClure parked his vehicle on the street in the vicinity of Union Station. The vehicle was ticketed because the car was parked in a crosswalk. After obtaining a towing control number as required from DPW, the vehicle was towed by one of Respondent's tow trucks to Respondent's storage lot at 1940 Montana Ave., N.E. Petitioner's Exhibit ("PX") 133.

When Mr. McClure returned to retrieve his vehicle after a brief stop in Union Station, he found that it was gone. An individual who had been standing in the area told him that his vehicle had been towed by Youngin's Towing. Mr. McClure believed his car was parked legally because he had not seen a "No Parking" sign on the side of the street where his car was parked.

Mr. McClure then called a friend who drove him to Respondent's lot on Montana Ave., where he found his car, provided proof of ownership, and received a bill for \$120 for the tow. When Mr. McClure asked if Respondent would accept a check or credit card in payment, he was told by men working in the office that Respondent only accepted cash. Mr. McClure did not have that much cash with him, so his friend loaned him the money to pay for the tow.

After retrieving the vehicle and driving to the entrance of the lot, Mr. McClure and his friend decided that they would return to the office to question why the car had been towed since Mr. McClure had not seen a sign. Two men in the office disputed this and said that there were signs posted.

Mr. James Gee, who owns Respondent, then drove onto the lot. One of the men in the office told Mr. McClure that his car was now blocked and that he wouldn't be able to leave. After Mr. Gee entered the office, one of his employees told him that Mr. McClure disputed the presence of a sign. At this point, Mr. Gee started shouting and cursing at Mr. McClure and walking toward him in an aggressive and threatening manner. Mr. Gee went into a tirade and hurled a string of insults at Mr. McClure, including racial epithets.

To avoid further confrontation, Mr. McClure and his friend returned to his vehicle so that that they could exit the lot. However, Mr. Gee's vehicle was still blocking the exit. Mr. McClure's friend requested that he move the vehicle so that they could leave, but he refused. Mr. McClure then called 911 and reached a dispatcher. While he was on the phone, one of the men in the office, who may have realized that a call was being made to the police, ran out to move the car. Mr. McClure then told the dispatcher that they no longer needed the assistance of

the police and they exited the lot. Respondent did not provide Mr. McClure with a copy of an “Owner’s Bill of Rights for Towed Vehicles” on November 5, 2006.⁶

A search of DPW’s Towing Control Log Data Base conducted on April 5, 2007 showed that Respondent failed to notify DPW’s Towing Control Center that Mr. McClure’s vehicle had been released back to him. As of April 5, 2007, DPW records showed that the vehicle was still in the possession of Youngin’s. PX133. Mr. Gee testified that his company called DPW prior to release because his company routinely does so. However, I find the records of the Towing Control Center to be more persuasive than Mr. Gee’s unrecorded recollection of past practices, and find that Respondent failed to provide the required notification.⁷

⁶ Mr. Gee testified that Mr. McClure was provided with an “Owner’s Bill of Rights” and that Mr. McClure paid cash because his friend chose to lend him the money, not because he was told that Respondent did not accept credit cards. I found Mr. McClure’s testimony on these points more credible for the following reasons: 1) Mr. McClure gave a detailed and coherent account of the events that transpired; 2) Mr. Gee gave contradictory testimony. At one point, he said that the employee at the desk did not refuse to take Mr. McClure’s credit card. At another point, he said that his credit card machine was broken in late 2006 when Mr. McClure was in the office. This calls into question Mr. Gee’s overall credibility. 3) Mr. McClure’s testimony that Respondent required payment in cash is consistent with the statement of another complainant, Mrs. Mitchell, who also said that Respondent required payment in cash. 4) Mr. McClure’s testimony that he did not receive the “Owner’s Bill of Rights” is consistent with the testimony of several other witnesses that they were not provided with that document.

⁷

According to the testimony of Leslie Trent, Director of DPW’s Towing Control Center, the Towing Control Center has both landlines and a computer-assisted dispatch system to handle requests for towing control numbers and to record releases. Mr. Trent testified that there have been periodic difficulties with the computer-assisted system, which prevents a caller from reaching a dispatcher because they hear continual ringing or a busy signal. In view of this, Respondent argued that the Towing Control Center may not have received calls made by Respondent to report a release.

Respondent’s argument is unpersuasive. First, the Towing Control Center advised all towing companies to call on the landline if they had difficulty getting through on the computer-assisted system. Secondly, if the computer assisted system was malfunctioning, it would be apparent to a caller because they would not reach an individual to take the information they were providing.

B. Conclusions of Law

In the Notice to Revoke, DCRA charged Respondent with four violations relating to the towing of Mr. McClure's car. None of the violations alleged relate to the initiation of the tow. The car had been ticketed for parking in a crosswalk and Respondent obtained a DPW Towing Control Number prior to towing the vehicle. All of the violations charged relate to events that transpired when Mr. McClure went to retrieve his car from Respondent's lot.

1. Release of Vehicle

DCRA charged Respondent with failing to promptly release a vehicle to the owner after receiving proof of identity and payment in violation 16 DCMR 408.7, which provides in relevant part:

... the towing service storage lot shall promptly release the vehicle to the owner or the owner's agent when presented with proof of personal identity and ownership or authorization to reclaim the vehicle, and upon payment of all towing and storage charges due.

The evidence demonstrates that after Respondent had presented proof of owner ship and paid all charges, Respondent's owner deliberately blocked Mr. McClure's vehicle from leaving the lot, refused to move it when requested, and did not direct that it be moved until it became apparent that Mr. McClure was calling the police. Such action is not in compliance with the requirement to "promptly release the vehicle" as mandated by the regulation after ownership has been verified and payment received. Accordingly, the evidence establishes a violation of 16 DCMR 408.7.

2. Payment Method

DCRA has charged that Respondent violated 16 DCMR 408.8 by requiring payment in cash. This regulation provides:

The towing businesses and towing services storage lots shall accept as payment for public towing and storage charges, cash, insurance draft, certified check, bank check, money order, and at least two (2) of the most widely-used, nationally recognized credit cards.

I have credited the testimony that Respondent refused to accept payment by credit card or check and required payment in cash. Requiring payment in cash is a clear violation of 16 DCMR 408.8.

3. Owner's Bill of Rights

DCRA charged Respondent with failing to provide Mr. McClure with an Owner's Bill of Rights upon release of the vehicle in violation of 16 DCMR 405.7, which provides:

A printed "Owner's Bill of Rights for Towed Vehicles" statement, issued by the Director, shall be given to the vehicle owner or operator by the tow truck operator before initiating the tow, if either the vehicle owner or operator is on the scene of the tow. The holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall conspicuously post, at each towing service storage lot, the Owner's Bill of Rights for Towed Vehicles statement and, upon release of the vehicle, shall provide a copy of this statement to the person to whom the vehicle is released.

I have found that Mr. McClure's testimony established that he was not provided with an Owner's Bill of Rights upon release of the vehicle, as required by 16 DCMR 405.7 the above regulation. Thus a violation of this regulation has also been established.

4. Failing to Contact DPW Prior to Release

DCRA charged Respondent with failing to contact DPW Towing Control Center prior to releasing Mr. McClure's vehicle to him in violation of 16 DCMR 405.3., which provides:

Prior to releasing a public tow vehicle, the operator of a storage lot shall contact the DPW Towing Control Center by telephone and report the date and time of the scheduled release, the condition of the vehicle, and to whom the vehicle is to be released.

Since the evidence that Respondent failed to call the Towing Control Center preponderates, a violation of this regulation has also been established.

IV. Incident on January 10, 2007 – Ms. Thornber

A. Findings of Fact

A vehicle owned by Ms. Thornber was towed by Respondent to his storage lot on December 28, 2006. When Ms. Thornber went to the storage lot to get the car on January 10, 2007, she was told that Respondent had moved the car from the storage lot to the public street and that her vehicle had been stolen while on the street.

GEICO insured Ms. Thornber's vehicle. When Glen Atchinson of GEICO called Mr. Gee to discuss the loss of the car, Mr. Gee was unwilling to talk with him. The car has still not been recovered. GEICO has sustained a loss of \$12,876, paid to its policyholder Ms. Thornber, for the stolen vehicle.⁸

B. Conclusions of Law

⁸ Mr. Gee testified that the car had been placed on the street at GEICO's request to enable GEICO to readily pick up the car. I do not find this credible. There is no indication that GEICO even learned that the car had been placed on the street until after Ms. Thornber was told that it had been stolen when she went to the lot on January 10, 2007 to pick up the car.

DCRA has charged Respondent with several violations of towing regulations in connection with this incident. First, DCRA charged Respondent with a violation of 16 DCMR 411.4(h), which provides:

A license endorsement issued under these regulations may be suspended or revoked by the Director for any of the following reasons:

(h) Failure to compensate vehicle owners for damage to their vehicles caused by, or due to the negligence of, the operators of a tow truck or towing service storage lot, and failure to reasonably secure and protect a towed vehicle and property therein;

Towing service storage lots must be located on a secured lot. 16 DCMR 405.1. The evidence demonstrates that Respondent moved a vehicle it had towed from its storage lot, required to be secured, and placed it on a public street. Except in an emergency, not shown in this record, placing a towed vehicle on a public street for storage constitutes a failure to reasonably secure and protect a towed vehicle within the meaning of 16 DCMR 411.4 (h). When a representative of GEICO called to discuss the loss it sustained compensating the vehicle owner for the stolen vehicle, Respondent would not discuss it and has not paid compensation for the vehicle. This constitutes a failure to compensate a vehicle owner for damage caused by Respondent's failure to reasonably secure and protect a towed vehicle. Consequently, a violation of 14 DCMR 411.4(h) has been established.

DCRA also charged Respondent with three additional violations in connection with the storage of Ms.Thorber's car on a public street. They include an alleged violation of 16 DCMR 402.3 (h) which requires that the location and description of Respondent's towing service lot be provided when Respondent applied for a business license. There is no evidence that Respondent did not supply that information when he applied for this license, and accordingly, that violation has not been established.

The remaining two violations charged can also not be sustained because they are inapplicable to the facts. One of the violations charged is a violation of 16 DCMR 410.10, which prohibits a tow truck operator from depositing a vehicle on public space that is inoperable or in disrepair.⁹ There was no evidence presented to demonstrate that the vehicle placed on the public street was inoperable or in disrepair. The other violation charged, a violation of 16 DCMR 402.4, requires a licensee to advise DCRA if there is a “discontinuance of the availability of towing service storage lot.”¹⁰ While a towed vehicle was removed from the lot and placed on a public street, there is no evidence that Respondent’s towing service storage lot became unavailable.

⁹ 16 DCMR 410.10 provides:

It shall be unlawful for a tow truck operator to deposit upon public space a vehicle that is inoperable or in a state of disrepair, except temporarily and for emergency purposes at the direction of a police officer or other authorized official.

¹⁰ 16 DCMR 402.4 (c) provides:

Each person or entity making application for a Basic Business License Endorsement for a Towing Service Storage Lot shall submit relevant information requested by the Director, in a form and manner specified by the Director, which information shall include the following:

(c) Any discontinuance or the availability of towing service storage lot to the licensee during the period shall be reported in writing to the Director at least ten (10) days prior to the expiration of the availability.

V. Incident on January 24, 2007 – Gladys Mitchell

A. Findings of Fact

A vehicle owned by Gladys Mitchell was ticketed because it had been parked in a fire lane by her grandson. On January 24, 2007, the vehicle was towed to Respondent's lot. Gladys Mitchell, who is 81 years old, went to the lot with her daughter and son-in-law to retrieve the vehicle. She requested to pay the towing fee by credit card, but was told that the company only accepted cash in payment. She paid the fee in cash and then went to get the car. When she looked in the car, she saw that the seat belt was stretched across and through the steering wheel and the plastic base on the belt appeared to be damaged. PX 100 (written complaint of Mrs. Mitchell's daughter).

Mrs. Mitchell then returned to the office to discuss the problem. Mr. Gee launched into a offensive tirade, calling her a liar, and ordered her off the premises in language that was rude and vulgar. When Mrs. Mitchell's son-in-law intervened, Mr. Gee directed a barrage of threats and insults at him, including racial epithets. PX 100.

Because Mr. Gee's tone, words, and composure made him appear potentially violent, Mrs. Mitchell and her family left the office. As they were departing, Mr. Gee stormed out of the office and ordered them to get their car off the lot immediately or he would have it towed. They left to avoid violence from an individual they believed to be seriously threatening. PX 100.

Investigator Stokes testified that Mrs. Mitchell, who did not testify at the hearing, told him that Respondent refused to accept payment by credit card and required payment in cash and never gave her an Owner's Bill of Rights. Mr. Gee testified that Mrs. Mitchell never asked about

a credit card and was provided with a copy of the Owner's Bill of Rights. For reasons discussed below, I am crediting the hearsay statements of Mrs. Mitchell.

B Conclusions of Law

DCRA has charged Respondent with two violations in connection with Mrs. Mitchell's retrieval of her car at Respondent's lot on January 24, 2007: requiring payment in cash in violation of 16 DCMR 408.8 and failing to provide an "Owner's Bill Of Rights" in violation of 16 DCMR 405.7.

DCRA's evidence in support of these violations consists solely of Inspector Stokes hearsay accounts of what he was told by Mrs. Mitchell, which are contradicted by Mr. Gee's direct testimony. The weight accorded hearsay evidence ranges from minimal to substantial based on a case-by-case evaluation of its reliability and probative value. When hearsay is contradicted by direct testimony, it is generally accorded less weight. *See Compton v. District of Columbia Board of Psychology* 858 A.2d 470, 478-479 (2004)

Although the Government's case relies on hearsay contradicted by direct testimony, I have nevertheless determined that its evidence has greater probative value than Respondent's evidence. First, Respondent provided contradictory statements about whether Mr. McClure was required to pay in cash. Those statements call into question the overall reliability of his testimony, especially on the question of whether his company required payment in cash. Secondly, the hearsay statement of Mrs. McClure that she did not receive an "Owner's Bill of Rights" is consistent with direct testimony given by other witnesses who said that they did not receive that document. Finally, the written account of the belligerent and threatening behavior displayed by Mr. Gee, documented in her daughter's written complaint (PX 100), is consistent

with the direct testimony of Mr. McClure about Mr. Gee's behavior, thereby lending additional credibility to Mrs. McClure's account of what transpired that day.

VI. Incident of January 29, 2007 - Maurice Moore

A. Findings of Fact

On January 11, 2007, Maurice Moore was involved in an accident in the 500 block of Florida Ave., N.W. His car, a 1993 Honda, was heavily damaged and was towed by Respondent to Respondent's storage lot. Mr. Moore went to the lot a few days later and met with Mr. Gee. When Mr. Moore returned to the lot on January 29, 2007, Mr. Gee informed him that he had sent the car to a junk yard. As shown by a search of DPW's Towing Control Event Log Data Base, Respondent did not notify DPW that he was releasing the car, and DPW still showed the car to be in Respondent's possession as of March 7, 2007. PX 115.

Mr. Moore's vehicle was insured by GEICO insurance. Mr. Gee gave Mr. Moore the names of three junk yards where he may have sent the car. GEICO insurance tried to locate the car at the junkyards but was not successful. GEICO's inability to locate the car greatly delayed and complicated Mr. Moore's receipt of payment from GEICO for the loss.

B. Conclusions of Law

Respondent has been charged with one violation with respect to this incident, failing to contact DPW prior to vehicle release as required by 16 DCMR 405.3. The records of the Towing Control Center establish that Respondent failed to contact DPW as alleged. Moreover, the failure to provide DPW with the name of the party to whom the car was released as required prevented GEICO from obtaining that information from DPW records.

VII. Incident on February 12, 2007 – Monique Collier

A. Findings of Fact

Respondent legally towed a recovered stolen vehicle belonging to Monique Collier to Respondent's storage lot on February 11, 2007. The car was released for repairs a day or two later. A search of the Towing Control Center's Database showed that Respondent did not report release of the vehicle. As of March 2, 2007, the Towing Control's Center's records still showed that the vehicle was in Respondent's possession. PX 121.

B. Conclusions of Law

DCRA has charged Respondent with a violation of 16 DCMR 405.3 for failing to contact DPW when it released the vehicle. The evidence establishes that Respondent violated the regulation as charged.¹¹

VIII Incident on March 21, 2007 - Leroy Atkins

A. Findings of Fact

A vehicle owned by Leroy Atkins was ticketed and towed from private property. after he parked it on the evening of March 20, 2007. On March 21, 2007, Mr. Atkins went to

¹¹ DCRA presented evidence that when Ms. Collier went to Respondent's lot the first time, she saw that the radio was still in her car, but that it was missing when she later returned to look at the car in the lot. It is unclear what, if any, violation DCRA has charged in connection with the radio that Ms. Collier reported missing. Consequently, no violation will be found.

Respondent's place of business to retrieve the vehicle. Upon entering the office, Mr. Atkins told Mr. Gee that he was a big rip-off, a belief that Mr. Atkins said he based on newspaper and television stories about Youngin's Towing. Mr. Gee then said that Mr. Atkins should keep his insults to himself and leave the premises. Mr. Gee also told Mr. Atkins to call the police.

Mr. Atkins called the police and they responded in about ten minutes. The police went into the office. Mr Atkins then paid the fee and the vehicle was released to him. Mr. Atkins testified that he received only a receipt from Respondent to which the ticket was attached, and did not receive an "Owner's Bill of Rights", and I so find.

Mr. Atkins was billed \$140 by Respondent, consisting of \$100 for a public tow, and \$40 for storage. Since the maximum daily rate for storage is \$20, Mr. Atkins was charged for two days of storage. Records of the towing control center show that Respondent obtained a towing control number at approximately 1 a.m. on March 21st, and I so find.¹²

B. Conclusions of Law

Respondent was charged with three violations in connection with this incident.

1. Excessive charge

Respondent was charged with violating 16 DCMR 408.1 for charging rates that exceed the maximum for public tows. That regulation provides in pertinent part:

The maximum rates that may be charged for all public tows initiated within the District of Columbia, and for all other services, including vehicle storage charges, related to public tows shall be as follows:

.....

¹² Mr. Gee contended that his company must have initiated the tow on March 20 before 12 midnight because the driver who towed the vehicle works from 4 pm to 12 midnight. However, I find that the records of the Towing Control Center have greater probative value.

(b) For Standard Towing Services, which apply to any passenger vehicle or any other vehicle with a Gross Vehicle Weight of 8,000 pounds, or less:

- (1) \$ 100.00 for Preparation, hoist, and tow to location within the District (Roll-back or wheel lift - use of dollies included);
- (2) \$ 3.00 for Towing charge per mile for each mile beyond the District line (at owner's request); and
- (3) \$ 20.00 for Storage, per 24-hour period, or part thereof.

DCRA contends that Respondent violated this fee schedule because Mr. Atkins was charged for two days of storage and he should only have been charged for one day. Records of the Towing Control Center show that Respondent obtained a towing control number about 1 a.m. on March 21. Mr. Atkins picked up his vehicle on March 21. Towing companies are prohibited from towing a car until they first obtain a towing control number. 16 DCMR 406.3. The fact that the towing control number was obtained after midnight is a persuasive indication that the tow was initiated after midnight. Therefore, since the regulation permits a \$20 storage fee “per 24-hour period, or part thereof” only one day of storage should have been charged and a violation of 16 DCMR 408.1 has been established.

2. Failing to Release Vehicle

Respondent was also charged with failing to promptly release a vehicle to the owner after receiving proof of identity and payment in violation 16 DCMR 408.7. To establish a violation of this regulation, the Government must prove that there was a failure to promptly release the vehicle after: (1) payment was made, and (2) proof of identify provided. Mr. Atkins testified that he had not made payment when Respondent told him to leave and call the police. He further testified that the car was released to him after he made payment. In addition, there is no evidence establishing that Mr. Atkins had presented proof of identity and ownership. Under

these circumstances, a necessary element of the offense has not been established and the Government has not met its burden of proving a violation by a preponderance of the evidence.

3. Owner's Bill of Rights

DCRA charged Respondent with a violation of 16 DCMR 408.9 for failing to provide an "Owner's Bill of Rights" to Mr. Atkins. A violation of this regulation is established in light of the finding that Respondent did not provide an Owner's Bill of Rights to Respondent upon release of his vehicle.¹³

IX. Criteria for License Revocation – Conclusions of Law

The Director of DCRA is authorized to suspend or revoke the licenses issued under towing regulations for reasons that are set out in 16 DCMR 411.4. The reasons relevant to the facts of this case include the following subparts of the regulation:

- (b) Failure of the licensee to comply with the provisions of this chapter;
- (c) Any charges for towing service or storage for public tows made in excess of the charges set forth by the Director;
- (h) Failure to compensate vehicle owners for damage to their vehicles caused by, or due to the negligence of, the operators of a tow truck or towing service storage lot, and failure to reasonably secure and protect a towed vehicle and property therein

¹³ The Government presented evidence to demonstrate that the address of Respondent's registered office filed with the corporation division was incorrect because the address erroneously listed was 2911 7th Street, N.W., although the registered office is at the street address in N.E. PX 107. The Notice of Revocation does not charge a violation with respect to the registered agent's address, and the provision alleged to have been violated has not been specified by the Government. Accordingly, the Government has not established a violation with respect to this issue to the extent it has sought to charge this violation as part of these proceedings..

The evidence in this case establishes violations of each of the above provisions. There were multiple violations found of “provisions of this chapter” (Chapter 4 – Towing Service for Motor Vehicles), as discussed above, which provides DCRA with ground for revocation of Respondent’s license pursuant to subsection (b). There was also a violation found with respect to a charge for a public tow in excess of that permitted, which provides an independent grounds for revocation under subsection (c) above. Finally, Respondent’s failure to compensate GEICO for costs it incurred to compensate its policyholder for the theft of the vehicle that was stolen after it was moved to a public street provides a basis for revocation pursuant to subsection (f).

X. Notice of Infraction – March 21, 2007 Incident – Leroy Atkins

In Case No CR-I-07-S700768, DCRA seeks fines under the Civil Infraction Act for the following violations: charging rates in excess of those permitted for a public tow in violation of 16 DCMR 408.1; failing to provide an Owner’s Bill of Rights in violation of 16 DCMR 408.9; and failing to release a vehicle when presented with payment and proof of identity in violation of 16 DCMR 408.7. In a Notice of Infraction served on May 10, 2007, the Government sought a fine of \$2,000 for the violation alleging excessive charges, and \$500 for each of the other two violations. Respondent entered timely pleas of Deny with respect to each of these alleged violations.

These alleged violations are the same three violations that were charged with respect to the incident involving Mr. Atkins on March 21, 2007 in the revocation case. For the reasons given above, the evidence established two of the violations, but not the third violation for failure to release the vehicle when presented with proof of payment and proof of identity.

The maximum authorized fine for one of the violations that was established, a violation of 16 DCMR 408.1 for charging rates for a public tow in excess of the maximum permitted, is \$2,000. 16 DCMR 3304.1(l); 16 DCMR 3201.1(a)(1). Fines are designed to have a deterrent effect and promote compliance with the fee schedule established for public tows. Consequently, although the dollar amount of the overcharge is relatively small, a significant fine is warranted. However, an overcharge of \$20 warrants a lesser fine than the maximum authorized. Consequently, a fine of \$1,000 will be assessed for this violation.

The authorized fine for the other violation that was established, failing to provide an Owner's Bill of Rights in violation of 16 DCMR 408.9, is \$500. As there is not a basis for mitigation of the fine, the authorized fine will be imposed. 16 DCMR 3304.3(i); 16 DCMR 3201.1 (c)(1). Thus total fine assessed for the violations in the Notice of Infraction that were established is \$1,500.

XI. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this 3rd day of October, 2007:

ORDERED, that Respondent's appeal of the Notice to Revoke Basic Business License issued April 27, 2007 is **DENIED**, and the proposed revocation of Respondent's Basic Business License No. 64000558 to operate a towing business and Basic Business License No. 64000559 to operate a towing service storage lot, both located at 1940 Montana Ave., N.E is **AFFIRMED**. and it is further

ORDERED, that Respondents shall pay a fine of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** in accordance with the attached instructions within 20 calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % or **TWENTY-TWO DOLLARS (\$22)** per month or portion thereof, starting 20 days from the date of mailing of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that appeal rights of any person aggrieved by this Order are set forth below.

Mary Masulla
Administrative Law Judge
/s/ October 3, 2007